

## **Summary of SC89888, *State of Missouri v. Robert M. Oliver***

Appeal from the Taney County circuit court, Judge Mark Orr

**Attorneys:** Oliver was represented by Nancy A. McKerrow of the public defender's office in Columbia, (573) 882-9855; and the state was represented by Ms. Jamie P. Rasmussen of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man challenges his convictions for sexual exploitation of two minors and promoting child pornography. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the convictions. The inevitable discovery doctrine permits the admission into evidence of a computer, camera and memory card seized from the man's house. Because these items later were searched pursuant to a valid search warrant, the photographs and images recovered from them also were admissible into evidence. The evidence of the nature and circumstances of the photographs the man took of a minor boy was sufficient for the jury to find the man guilty of sexual exploitation of a minor. In addition, the evidence was sufficient for the jury to find the man intended to exhibit the photographs he took as well as child pornography images from the Internet, supporting his conviction for promoting child pornography. The fact that he later deleted the photographs does not negate his intent.

**Facts:** In November 2005, a 5-year-old boy and his 8-year-old brother told their mother that, while they were playing at Robert Oliver's house earlier that day, Oliver had taken photographs of them with their clothes off. He then had shown the photographs to them on his computer. The mother reported the incident to the police. After taking a report from the mother and her boys, police officers and a division of family services investigator went to Oliver's home. Oliver told police he owned a digital camera. He admitted taking photographs of the boys that afternoon but said they were "just of their bellies." When a detective asked for consent to search the digital camera and computer tower he saw in Oliver's home office, Oliver told the detective he would need to obtain a search warrant. The detective then called another detective and initiated the process to obtain a warrant for the camera and the computer. The investigator then told Oliver and his wife that, based on the allegations, Oliver and his own two children could not remain in the home together. Given several options, Oliver left the home. The detective subsequently asked Oliver's wife for permission to search the office and take the computer and camera. She agreed, signed a form giving her permission for the search (resulting in the detective canceling the process to obtain a warrant for the search) and opened a desk drawer in the office for the police officers. The officers took the digital camera, computer tower, 13 floppy disks and one rewritable CD. A detective later filed

an application and affidavit for a warrant to search Oliver's computer, digital camera and flash memory card, the CD, and the floppy disks. The warrant was issued the same day.

The state subsequently charged Oliver with two counts each of sexual exploitation of a minor and first-degree promoting child pornography. Before trial, Oliver moved to suppress the computer, camera, memory card and CD, arguing the seizure of these items violated the Fourth Amendment. After a preliminary hearing, the circuit court overruled Oliver's motion. During a July 2007 jury trial, Oliver objected to the admission of the camera, computer and disks; the information recovered from these items, including Internet child and adult pornography images and photographs showing the boys with their genitals exposed and separating their buttocks; and the detective's testimony about the information recovered. The court overruled his motion, the jury found Oliver guilty as charged, and the court sentenced him to concurrent prison terms of 15 years for sexual exploitation of a minor and 10 years for promoting child pornography. He appeals.

### **AFFIRMED.**

**Court en banc holds:** (1) The trial court did not clearly err in overruling Oliver's motion to suppress the computer, camera and memory card. The inevitable discovery doctrine provides that, even if a search constitutionally is invalid – an issue this Court does not reach here – the evidence may be admissible if the state proves, by a preponderance of the evidence, that law enforcement officers ultimately or inevitably would have discovered the evidence. Here, the search warrant the detective originally began to process was cancelled because Oliver's wife consented to the search. Absent her consent, the officers would have followed protocol to obtain the warrant for the computer, camera and memory card. There was sufficient probable cause to obtain such a warrant, and the detective on the scene testified he would not have left the Oliver home without these items. As such, these items were admissible under the inevitable discovery doctrine.

(2) The trial court did not err in overruling Oliver's motion to suppress the photographs and images recovered from the camera's memory card, the computer's hard drive and the disks. Even had the seizure of the items been constitutionally invalid, the only information retrieved from the seizure was the make, model and serial numbers of the computer hard drive and camera. The affidavit supporting the warrant application relied primarily on the allegations in the initial child abuse report and general information regarding the use of computers and child pornography. This information, available to officers prior to the seizure, was sufficient to establish probable cause to search the contents of the camera's memory card, the computer's hard drive and the disks. Because the items were retrieved pursuant to a valid search warrant, the photographs and images recovered from them were admissible.

(3) There is sufficient evidence to support Oliver's convictions. The two photographs of a boy bending over with his unclothed buttocks toward the camera and separating his

buttocks with his hands depict “sexual conduct” as defined in section 556.061(29), RSMo Supp. 2004. Given the nature of this position, the fact this position is the primary object of the photographs and the circumstances under which the photographs were taken, this contact is an act of apparent sexual stimulation. As such, the evidence was sufficient for the jury to find Oliver guilty beyond a reasonable doubt of sexual exploitation of a minor. Further, the evidence showed Oliver not only intended to but also did exhibit the photographs of the children without their clothes, as he showed the photographs on the computer screen to the 5-year-old boy. The fact that he deleted the photographs does not negate his intent to exhibit the images at the time he possessed them, as the statute does not require that, at the time of trial, a defendant possess the photographs with intent to exhibit them. As to Oliver’s intent to exhibit Internet pornography, the evidence showed Oliver had access to the images on his computer’s hard drive and that he viewed them more than once. There was sufficient evidence for the jury to find that Oliver intended to exhibit the photographs of the boys and the child pornography images from the Internet sufficient to support his conviction for first-degree promoting child pornography.